

DIRECT TESTIMONY

of

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Energy Division

Policy Section

Illinois Commerce Commission

Docket No. 03-0022
Illinois Power Company

Proposed Sale of Transmission Assets

February 7, 2003

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1 **I. Qualifications**

2 **Q. Please state your name and business address.**

3 A. Howard J. Haas, 527 East Capitol Avenue, Springfield, Illinois 62701.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by the Illinois Commerce Commission ("Commission") as a
6 Senior Economist in the Policy Section of the Energy Division.

7 **Q. How long have you been employed by the Illinois Commerce Commission?**

8 A. I have been employed by the Commission since June 1, 2000.

9 **Q. Will you please state your qualifications?**

10 A. I earned my Ph.D. in Economics, with dual concentrations in Industrial
11 Economics and Public Finance, from Michigan State University in 1999. During
12 my graduate studies I worked as a consultant with the Michigan Gas and Electric
13 Association. I also worked for three years as a researcher at the Department of
14 Resource Development at Michigan State University. I was a visiting professor
15 and graduate teaching assistant at Michigan State University, as well as a guest
16 lecturer on environmental and regulatory economics. As a visiting professor and
17 graduate teaching assistant, I taught classes on Money and Banking, Industrial
18 Organization, Microeconomics, and Public Policy.

19 **Q. Have you previously testified before the Commission?**

20 A. Yes. I have testified before the Commission on numerous occasions.

21 **II. Purpose of Testimony**

22 **Q. What is the purpose of your testimony?**

23 A. The purpose of my testimony is to evaluate Illinois Power Company's ("IP" or
24 "Company") filing, and to discuss the potential effect of IP's proposed sale of its
25 transmission system on its ability to provide reliable service to all tariffed
26 customers. I will examine arguments made by both Illinois Electric Transmission
27 Company, LLC ("IETC") and IP regarding the potential benefits and costs of the
28 proposed sale in both their filing at the Commission and the Federal Energy
29 Regulatory Commission ("FERC"). I will also provide recommendations on an
30 appropriate course of action with regard to IP's filing based on its merits relative
31 to the statutory standards and based on an examination of the observable costs
32 and benefits and competitive impacts of the transaction given the Commission's
33 obligation under Section 16-101A(d) of the Public Utilities Act ("Act"). (See 220
34 ILCS 5/16-101A(d).)

35 **Q. Under what circumstances may the Commission prohibit a proposed**
36 **transaction of assets to an affiliate or non-affiliate?**

37 **A.** Section 16-111(g)(vi) of the Act states, in part:

38 The Commission may, after notice and hearing, prohibit the proposed
39 transaction if it makes either or both of the following findings: (1) that the
40 proposed transaction will render the electric utility unable to provide its
41 tariffed services in a safe and reliable manner, or (2) that there is a strong
42 likelihood that consummation of the proposed transaction will result in the
43 electric utility being entitled to request an increase in its base rates during
44 the mandatory transition period pursuant to subsection (d) of this Section.
45

Q. Should the Commission evaluate IP's Notice to sell its transmission assets to IETC, via Section 16-111(g), within the context of IETC's petition for a Certificate of Public Convenience and Necessity ("Certificate") in Docket No. 02-0742/02-0743 (Consolidated), and any shortcomings therein?

A. Yes. The Commission should make any evaluation of IP's notice to sell its transmission assets within the context of what the potential buyer intends to do with those assets, its obligations once it owns those assets, and its ability to manage the assets after the sale. IETC's obligations, if any, after the sale will have a direct bearing on whether "the proposed transaction will render the electric utility unable to provide its tariffed services in a safe and reliable manner." (220 ILCS 5/16-111(g)(vi).) If for example, IETC were intending to dismantle the transmission system and sell the metal as scrap after the sale, this would have a direct bearing on IP's ability to continue to provide safe and reliable tariffed service. Likewise, if IETC could refuse unbundled transmission service to some of IP's customers, that would have a direct bearing on IP's ability to continue to provide safe and reliable service after the sale.

Q. What are the Commission's obligations under Section 16-101A(d) of the Act?

A. Section 16-101A(d) states, in part:

The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Consumer protections must

be in place to ensure that all customers continue to receive safe, reliable, affordable, and environmentally safe electric service.

Q. Why does Section 16-101A(d) of the Act apply to this proceeding?

A. While the primary standard appears to be Section 16-111(g), the Commission must keep in mind the overall impacts of any action it takes, or does not take, on the development of an effectively competitive electricity market that will provide for net benefits to Illinois consumers.

III. Summary of Findings and Recommendations

Q. Please summarize your findings and recommendations.

A. My overall recommendation is that the Commission deny IP's proposed sale of its transmission system to IETC. Based on information that was filed by IETC and IP at both FERC and the Commission, I have identified two issues with the proposed transaction.

The question of the continued provision of unbundled transmission service after the sale is of particular importance in my analysis of this transaction, as this would undermine the continued reliability of tariffed delivery services ("delivery services") in IP's territory. In addition, under IP's current arrangements and IETC's filings in consolidated Docket No. 02-0742/02-0743, it is not clear that the theoretical benefits of the proposed transaction are guaranteed. For these reasons, it is my position that the approval for the proposed sale, and attendant agreements, be denied.

94 **Q. Are there changes that could be made to the proposed sale of IP's**
95 **transmission assets that would alleviate these concerns?**

96 **A.** Yes. With certain changes in the proposed sale and in IETC's petition for
97 certification to be considered a public utility (see Docket No. 02-0742), I believe
98 the risks could be mitigated and sufficient net benefits realized by IP's tariffed
99 customers so that a recommendation could be made that the Commission
100 approve the transaction.

101 **IV. Section 16-111(g)(vi) Reliability Standard**

102 **Q. Could you briefly describe the concerns about the transaction relative to**
103 **the Section 16-111(g)(vi) standard regarding the continued, reliable**
104 **provision of tariffed service?**

105 **A.** The central concern is the proposed transaction's effect on the continued,
106 reliable provision of all components of delivery services to eligible customers.

107 **Q. Why is the reliability of delivery services a concern under the Section 16-**
108 **111(g)?**

109 **A.** Pursuant to Section 16-103(b) of the Act, an electric utility must offer delivery
110 services as tariffed services. Delivery services are defined as follows:

111 those services provided by the electric utility that are necessary in
112 order for the transmission and distribution systems to function so
113 that retail customers located in the electric utility's service area can
114 receive electric power and energy from suppliers other than the
115 electric utility. (See 220 ILCS 5/16-102.)
116

As such, the transaction proposed by IP and IETC cannot have a negative impact on the reliable provision of delivery services as a tariffed service, via Section 16-111(g)(vi), nor any component of that service—such as transmission.

Q. Why are you concerned that the transaction could negatively impact the reliable provision of tariffed delivery services?

A. There is a question as to which, if any, of the parties (i.e., IP or IETC) will have an obligation to continue to provide reliable unbundled transmission service, as a component of delivery services, after the sale of IP's transmission assets to IETC. IP witnesses claim that IP will not be obligated to provide such service after the sale, and IETC's obligation to provide such service is limited to that provided by FERC rules and regulations under the applicable OATT. (IP Exhibit 6.1, p. 8.) IP witness Robert L. Perkes states that, after the sale, IP "will continue to have the same rights under its certificates of public convenience or pursuant to operation of law to provide retail electric service....with the exception of the provision of unbundled transmission service to eligible customers." (IP Ex. 6.1, p. 8.) Mr. Perkes further states that "IETC will succeed to Illinois Power's rights and obligations to provide unbundled service to Eligible Customers....under IETC's Open Access Transmission Tariff (OATT). (IP Ex. 6.1, p. 8.) This view is echoed by IP witness, Shawn Schukar, when he states "IETC or the RTO will provide unbundled transmission service directly to retail electric customers under the transmission provider's Open Access Transmission Tariff (OATT), and Illinois Power will cease to provide unbundled transmission service to those retail customers." (IP Exhibit 5.1, p. 5.) IETC, for its part, states:

IETC, as a public utility, will be transmitting electricity for use by the public at rates, terms, and conditions subject to regulation by the [FERC]. By virtue of the fact that all Illinois retail customers are eligible under state law to take unbundled delivery services, and by virtue of the fact that Illinois Power (and other electric utilities) are required by State law to offer unbundled delivery services, any Illinois retail customer can become eligible to take unbundled transmission service from IETC by electing unbundled service under state law. Moreover, IETC's eligible transmission customers under the applicable [OATT] that will be on file with the FERC will include Illinois retail customers taking unbundled delivery services.

¹ Thus, pursuant to IETC's proposed tariff and federal law, IETC will be obligated to provide unbundled retail transmission service to Illinois customers taking unbundled delivery services. (IETC Verified Petition in Docket No. 02-0742, p. 2.)

IETC and IP are arguing that the obligation to provide unbundled transmission to eligible retail customers will pass from the electric utility, IP, to the public utility, IETC, that is taking ownership of the transmission system. The argument is that IETC, by operating in a state that requires open access, will take possession of any such requirement via FERC requirements that it do so.

There is, however, a fundamental flaw in this reasoning. The relevant portion of the pro-forma OATT requires the transmission provider (i.e., IETC), to serve eligible customers described as follows:

(ii) any retail customer taking unbundled service pursuant to a **state requirement that the Transmission Provider** offer the transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider. (62 CFR 12274, emphasis added.)

¹ Pro-forma OATT § 1.11(ii)). See FERC Order No. 888-A, 1996-2000 FERC Statutes & Regulations, Regulations Preambles ¶31,048, at 31,508 (1997) (definition of eligible customer includes retail customers taking unbundled transmission service)." Petition, page 2 (footnote is as shown.)

However, state law only appears to require **electric utilities** to provide unbundled transmission as a component of delivery services. Section 16-108(a) states:

An **electric utility** shall provide the **components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by that Commission.** The Commission shall otherwise have the authority pursuant to Article IX to review, approve, and modify the prices, terms and conditions of those components of delivery services not subject to the jurisdiction of the Federal Energy Regulatory Commission, including the authority to determine the extent to which such delivery services should be offered on an unbundled basis. (220 ILCS 5/16-108(a).)

In the absence of designation as an electric utility under Illinois State law, it is not clear that IETC will be obligated, under state law or federal rule, to provide unbundled service in the absence of either a continued obligation by IP or without IETC's status as an electric utility, as defined in 220 ILCS 5/16. Without an obligation to provide unbundled transmission to delivery service customers under state law, it would appear that the FERC rules requiring the availability of unbundled transmission to retail customers would not apply, and the reliable provision of tariffed delivery services would be put at risk by the sale of IP's transmission assets to IETC. Absent such an obligation on the part of IETC, it is my recommendation that the proposed transaction between IP and IETC be denied.

Q. What could be done to mitigate your concerns regarding the potential costs that could be imposed by a lack of an IETC obligation to provide unbundled transmission services to Eligible Customers in Illinois?

A. IETC must have a clear obligation, after the sale, to provide unbundled transmission service to retail customers, subject to tariff oversight at either the state and/or federal level. To achieve this, either IETC must be designated an electric utility, as defined in Article XVI of the Act, or IETC's Certificate must contain a clear obligation for IETC, or any successor to IETC, to provide unbundled transmission service to retail customers and their agents within the State of Illinois.

Q. Please describe your solution that would require IETC to be designated an electric utility and how that would address the need for an obligation to provide unbundled transmission services.

A. If IP does not retain the obligation to provide unbundled transmission service, it is not clear that IETC would, as a public utility, be obligated to provide unbundled transmission to eligible retail customers. If Article XVI, which allows for unbundled transmission service, truly only applies to electric utilities, then FERC rules requiring the provision of unbundled transmission service would not obligate a non-electric utility in Illinois to offer unbundled transmission. (62 CFR 12274.) Simply requiring IETC to be designated an electric utility, at least for purposes specific to the provision of unbundled transmission, would solve this concern.

218 **Q. Would there be any negative consequences to IETC being designated an**
219 **electric utility?**

220 **A.** Other than providing the basis for the obligation to provide unbundled
221 transmission service, designating IETC as an electric utility should have little
222 impact on IETC. If IETC has specific concerns with regard to being declared an
223 electric utility, IETC should provide those concerns so that they can be
224 addressed and, as needed, the Commission could condition IETC's Certificate
225 accordingly. There might, for example, be a concern that designation as an
226 electric utility may allow IETC to provide distribution service, as a component of
227 delivery services at some point in the future, at IETC's initiation or that of a
228 customer request. To address this concern, the Commission should insert
229 language, as part of IETC's Certificate, that would require IETC to provide IP
230 distribution customers all services that meet the definition of "delivery services"
231 that IP is abandoning (where applicable), but would not be permitted to offer
232 distribution services, within the IP service territory, that IP continues to offer,
233 subject to future review.

234 **Q. Please describe your proposed solution involving IETC's Certificate being**
235 **conditioned on it having an obligation to provide unbundled transmission**
236 **service to retail customers and their agents.**

237 **A.** In the absence of IETC's designation as an electric utility, the language in IETC's
238 Certificate should be structured so as to require IETC, or its successor, to offer
239 unbundled transmission service to retail customers and their agents as a

condition of IETC's, or IETC's successor's, Certificate. The imposition of this condition on IETC will ensure Commission enforcement and potential recourse.

V. The Section 16-101A Requirement: Benefits and Costs of the Transaction

Q. Both IETC and IP argue that the sale of IP's transmission assets to an independent transmission company will provide benefits to IP customers, to Illinois, and to the region. (IETC, Ex. 1.0, pp. 4-5.) Do you agree with this assessment?

A. All else held equal, I will state that for purposes of developing competitive markets for electricity, a market model that involves transmission assets that are independent of market interests is preferable to one where transmission assets have or are affiliated with market interests.

Q. What specifically would truly independent transmission do for the development of competitive wholesale and retail markets?

A. By eliminating the conflicts of interest that currently exists between transmission and market interests, such as generation and marketing assets, an independent transmission company would not have an incentive to limit the sources of competitive wholesale energy supply in an affiliate's market, be they from new generation sources being interconnected to its grid or from it building new transmission. A truly independent transmission company would have less incentive to under-represent available transmission capacity to wholesale and retail entities because it does not have affiliated wholesale or market interests to advantage by withholding capacity. Depending on regulatory structure, an independent transmission company would tend to have fewer disincentives to

build new transmission than either a vertically integrated company or a transmission company with generation and marketing interests.

Q. Are these benefits of independent transmission quantifiable?

A. The short answer is that independent transmission, within a Regional Transmission Operator ("RTO") structure, will provide an incremental benefit to a deregulated electricity market relative to an RTO operating a deregulated electricity market with vertically integrated utilities. However, the exact monetary value of the incremental benefit of independent transmission is speculative. The benefits of independent transmission are easy to envision. Economic theory is clear that the current market structure, revolving around vertically integrated companies, creates incentives to discriminate against sources of potential competition. However, quantifying the cost of this discrimination is difficult. First of all, discriminatory behavior by an incumbent utility towards potential wholesale competitors is extremely difficult to detect, let alone measure. While the inherent value of independent transmission in a deregulated market is recognized, without some idea of how much discrimination is going on now, in terms of over priced or refused generation interconnection, lines that were not built solely for reasons related to affiliated market interests, and higher energy prices, it is next to impossible to get a real handle on the dollar value benefit that independent transmission will bring to the table.

The measurement of the benefits from a move to independent ownership of transmission assets is further complicated by the fact that the FERC has taken steps, in the absence of truly independent transmission, to introduce some

measure of independence to the actual operation and management of transmission through the development of RTOs and Independent System Operators (“ISO”). RTOs are intended, in part, to provide independent oversight of generation interconnection, regional transmission planning, available transmission capacity calculations, transmission load relief, and market operation. In other words, RTOs are supposed to bring some measure of independence to the management and execution of the activities that a transmission owner could otherwise use to favor its affiliated market interests. Lack of true independence between transmission assets and market interests will still have the incentives to favor their market interests, but it should be harder to do get away with in theory. This means that RTOs, in theory, will provide some of the benefits that independent transmission has promised. I would, however, expect truly independent transmission assets, working within an RTO, to provide an incremental improvement over what an RTO alone will provide. How large an incremental improvement would be difficult to measure.

Q. In FERC testimony, a number of IETC witnesses discuss the potential benefits of a particular infrastructure investment that they claim that IETC, by virtue of its independent ownership of IP’s transmission lines, would be more likely to pursue than IP would if IP maintained ownership of the lines. (McCoy, Exhibit No. TE-1, Dockets EC-03-000 and ER03-284-000, p. 14.)² Can you discuss this potential project within the context of the measurable benefits of independent transmission?

² See Attachment A.

308 **A.** IETC witness Ronald Norman presented a societal benefit study regarding the
309 potential benefits of “a proposed 345 kV transmission line between Sidney and
310 Rising 345 kV electrical substations.” (Norman, Ex. No. TE-10, Docket Nos.
311 EC03-03-000 and ER03-284-000, p. 1)³ The basis of looking at the societal
312 impacts of such a project is that IETC has a greater incentive, or more correctly,
313 less disincentive, to build this line, than IP would or does as the current owner of
314 the transmission system in the area in question. (McCoy, Exhibit No. TE-1,
315 Dockets Nos. EC03-03-000 and ER03-284-000, p. 14)⁴ Mr. Norman calculated
316 net societal benefits within Illinois Power’s territory alone to be from \$3.9 to \$6.5
317 million dollars (in 2003 dollars) in 2006. (Norman, Ex. No. TE-10, Docket Nos.
318 EC03-03-000 and ER03-284-000, p. 5.)⁵ Benefits to Illinois were measured from
319 \$7.6 to \$10 million (2003 dollars) in 2006. (Norman, Ex. No. TE-10, Docket Nos.
320 EC03-03-000 and ER03-284-000, p. 5.)⁶
321 These are sizeable numbers, and assuming that Norman correctly captured
322 benefits, indicate that the proposed line, with or without IETC ownership of the
323 IP’s transmission system, should be built. However, these numbers are not a
324 measure of the benefits that independent ownership of IP’s transmission lines will
325 bring to IP customers or the state of Illinois. Instead, Mr. Norman has provided a
326 measure of the benefits of a proposed line. There are a number of reasons I
327 make this distinction.

³ Id.
⁴ Id.
⁵ Id.
⁶ Id.

First, IETC has not made a commitment, per se, to see this line built. IETC has limited its commitment to providing “ the Midwest ISO, all of Trans-Elect Applicants’ studies and analysis and other support to allow the Midwest ISO to undertake and complete the required study process and approve the construction of the Sidney-Line.” (McCoy, Exhibit No. TE-1, Dockets Nos. EC03-03-000 and ER03-284-000, p. 14.)⁷ There is no guarantee that IETC or the Midwest ISO (“MISO”) will be any more successful in building this line built than IP. While IETC may have fewer disincentives to propose or pursue such a line, Not-In-My-Back-Yard (“NIMBY”) sentiments have blocked many a worthy project. As a measure of benefits to Illinois, IETC would need to modify the benefit calculation by the probability that the line would be built.

Second, the real potential benefit of IETC’s commitment to present this case study to MISO would take the form of a reduced time line from concept to implementation. Mr. McCoy states that IETC’s report to MISO will “substantially reduce the time required for the RTO study and approval process...and substantially accelerate the date by which these new transmission facilities can be constructed.” (McCoy, Exhibit No. TE-1, Dockets Nos. EC03-03-000 and ER03-284-000, p. 15.)⁸ MISO has its own Regional Planning process by which it is supposed to identify the need for projects like the one being discussed here. Assuming this Regional Planning Process is working, and the benefits of this potential project are as great as IETC has claimed, then one could argue that this project would be built in due time. Reducing the time from concept to reality for

⁷ Id.
⁸ Id.

such a potentially beneficial project, of course, has value. However, that is an incremental value based on receiving the stream of annual benefits sooner rather than later. This is not a negligible sum, but it emphasizes the idea that fully independent transmission systems, within an RTO structure, will only be providing an incremental benefit over an RTO in the absence of independent transmission—assuming the RTO is functioning as intended.

Third, IETC has not claimed that IP would not build or attempt to build this line. In fact, IP did attempt to build a line between the substations in question, but local resistance blocked them. (See ICC Staff Exhibit 5.00 for more details.) IETC does not explain why, given the public opposition that was involved the last time this line was proposed, it would be more likely to successfully build this line than IP. The fact that IP did propose and attempt to build this line in the past would also seem to indicate that IETC's arguments with regard to its incentives, relative to IP's, seem overstated, at least for purposes of proposing this line in particular.

Q. What is your overall assessment of the benefits that independent transmission can provide within the context of a functional RTO or ISO?

A. Overall, the benefits of independent transmission, to the extent that they are measurable, should provide an **incremental** benefit in terms of improved opportunities for competition, increased transmission investment, and lower energy prices over the benefits that should be provided by RTOs alone.

Q. You have stated that the benefits of independent ownership of the IP's transmission line are difficult, if not impossible, to quantify. Are there any societal costs associated with IETC buying IP's transmission system?

A. Aside from the concerns I raised earlier with regard to reliability issues, the most easily identifiable societal cost of IETC acquisition of IP's transmission system will be the immediate increase in transmission costs relative to IP's current rates. Bundled customers may be shielded until the end of the rate freeze, assuming IP does not come in for a rate increase after the sale. Non-Power Purchase Power ("PPO") delivery service customers will see an immediate increase in service costs associated with transmission. Non-PPO, SC 21 customers on delivery services, for example, would see a 51% increase under IETC ownership of the transmission lines relative to IP's current transmission rates for those customers. (IP response to IIEC First Data Request, IIEC-IP-1-3.)⁹ Overall, IETC is requesting transmission revenue requirements that are 91% greater than those currently being used by IP. (IP response to Staff Data Request, BAL-4.)¹⁰ These are large percentage changes in transmission rates in the absence of new transmission or other immediate improvements in service, in terms of actual bottom line costs. This estimated increase in revenue requirements is tempered, however, by IP's claim that it would be filing for rates, in the absence of the sale that would increase the transmission charges to SC 21 customers by 27% relative to what they are currently being charged. (IP response to IIEC First Data Request, IIEC-

⁹ See Attachment B.

¹⁰ See Attachment C.

IP-1-3.)¹¹ If IP were to receive such an increase, then the obvious cost of IETC ownership would be a 19% increase in transmission rates to a non-PPO SC 21 DST customer. (IP response to IIEC First Data Request, IIEC-IP-1-3.)¹² In terms of overall transmission revenue requirements, IP is claiming that it will ask for a 34% increase in its revenue requirements in the event that it does not sell the assets. (IP response to Staff data request BAL-4.)¹³ In the event that IP got a 34% increase in its revenue requirement, absent the sale, IETC's requested revenue requirement would then constitute only a 42% increase in the revenue requirement relative to IP's rates, absent the sale. (IP response to Staff Data Request, BAL-4.)

However, it can also be argued that IP is grossly overestimating the 34% increase in its revenue requirement that would substantiate a 27% increase in its transmission rates to an SC 21 customer. IP, for example, assumes that it will be able to switch from depreciated to gross transmission plant in the calculation of its revenue requirement. IETC, for that matter, may not get 91% increase over IP's current revenue requirement either. While FERC has not ruled out this possibility as an incentive to get utilities to join RTOs (See U.S. FERC, 18 CFR Part 35, Docket No. PL03-1-000), what FERC ultimately will use for the basis of revenue requirement calculations is not certain. In any event, the uncertainty around the probable revenue requirements, with or without the sale, creates a range of probable transmission revenue requirement increases, as the cost of

¹¹ See Attachment B.

¹² Id.

¹³ See Attachment C.

IETC providing independent ownership of the transmission system. This increase in revenue requirements caused by IETC's ownership of IP's transmission lines could easily range from 42% to 91% more than what IP would be allowed to collect absent the sale.

Q. Does this range of probable revenue requirement increases represent a very large cost increase to IP customers?

A. On a total bill basis, no. In terms of total end customer cost, it is important to note that we are talking about significant changes in very small numbers. IP, for example, is currently charging SC 21 customers .14 cents per kWh (\$.0014 per kWh) for transmission. (IP Response to IIEC-IP-1-3, Docket 03-0022.)¹⁴ IETC proposed rates for this SC 21 customer represents an increase of .072 cents a kWh (\$.00072 per kWh) over IP's current transmission rate. (IP Response to IIEC-IP-1-3, Docket 03-0022.)¹⁵ Transmission costs represent a small percentage of a customer's total bill.

Q. Are you concerned about IETC's current and continued independence from market interests and how does that factor into your comparison of costs and benefits of the proposed transaction?

A. I am concerned that IETC, after the purchase of the transmission assets, has no obligation to remain an independent transmission company. There is nothing to prevent IETC, one year down the line, from creating marketing affiliates and generation affiliates that can operate in IP's service territory. In the event of such

¹⁴ See Attachment B.

¹⁵ Id.

activity on the part of IETC, all the theoretical benefits of independent transmission, as described by Mr. Drzemiecki in his FERC testimony (Ex. No. TE-5, Docket No. EC03-30-000, pp. 20-21)¹⁶, would be forfeited, and then we would be back where we started in our efforts to restructure the market in Illinois, only with higher rates for transmission.

Q. Has IETC offered to make assurances to the Commission regarding its intention and commitment to remain an independent transmission company?

A. IETC has made an attempt to address this concern. In response to a Staff Data Request POL 1.1, IETC stated the following:

Upon approval of the requested relief, IETC will be an independent transmission utility and it has no plans or intentions whatsoever to become a market participant by becoming involved in other businesses which may be competitively or financially impacted as an ongoing condition of its status as a certified public utility under the Illinois Public Utilities Act. (IETC's Response to Staff Data Request POL 1.1.)¹⁷

IETC also stated:

While IETC does not believe that it would be lawful, even if agreed to by IETC, for the Commission to condition a Certificate on IETC's advance waiver of other rights, IETC notes that it has requested a Certificate to operate *only* as a transmission utility and it has no objection to the Certificate it requests being clearly limited to exercise of that authority only. (IETC's response to Staff Data Request POL 1.1.)¹⁸

Q. Are IETC assurances, as presented in the response to POL 1.1, sufficient to address your concerns regarding IETC's current and continued independence from competitive interests in the marketplace?

¹⁶ See Attachment A.

¹⁷ See Attachment D.

¹⁸ Id.

463 **A.** No. IETC's response to Staff Data Request POL 1.1 falls short of the concrete
464 evidence that the Commission should require to ensure the independence of the
465 IETC from market interests. IETC's assurances do not address more
466 fundamental issues of the current or future involvement by IETC with financial
467 interests of market participants.

468 **Q. What would you propose IETC do to provide proof of independence from**
469 **market interests, now, and going forward?**

470 **A.** To ensure that the theoretical benefits of independent transmission can be
471 realized, the Commission needs to secure a binding commitment from IETC that
472 it will remain independent of wholesale (non-transmission) and retail market
473 interests which may be competitively or financially impacted in the
474 Midwest/regional market for electricity. That would mean that IETC could not
475 own in whole, or in part, competitive interests involved with the generation or the
476 marketing of power. This would also mean that competitive interests involved
477 with the generation or the marketing of power could not own IETC or its holding
478 companies to any significant degree. Total ownership of IETC, its affiliates or
479 holding company(s), by parties with competitive interests in power markets
480 should be limited to less than 5% of total voting shares of IETC and its holding
481 company(s). I recommend that the Commission make these conditions of IETC's
482 Certificate under Section 8-406(a) of the Act. The Commission should a) reserve
483 the right to revoke IETC's Certificate, and b) reserve the right to impose
484 sanctions and/or penalties on IETC, subject to hearing, in the event that IETC
485 violates such requirements. (See Section 8-406(f), 8-407(c), 8-502, and 8-505.)

To ensure compliance, the Commission should require IETC, as a condition of its Certificate, to make an annual filing of the following information:

- A.) A copy of the Illinois Transco Holdings, LP partnership agreement involving the general partner(s) and limited partner(s) and any other agreement dealing with ownership interests and management interests in Illinois Transco Holdings, LP, and any other agreements that relate to ultimate management and control of IETC.
- B.) Provide the information required in 18 C.F.R § 33.2(c) for each general partner and limited partner in Illinois Transco Holdings, LP.
- C.) Identify all active or passive ownership interests in Illinois Transco Holdings, LP by market participants.
- D.) Identify all financial interests by Trans-Elect, Inc., Trans-Elect Illinois, LLC, Illinois Transco Holdings, LP, IETC, or the employees or management of these entities, in any market participant. For the purpose of responding to Parts C and D of this requirement, "market participant" is defined as in 18 C.F.R. § 35.34(b) with respect to MISO.

In the event that the information provided to the Commission shows that IETC violated the market interest requirements of its Certificate, the Commission should, at its discretion, start a proceeding to either revoke IETC's Certificate or pursue other action. (See Section 8-406(f), 8-407(c), 8-502, and 8-505.)

Q. Could you summarize your position and suggestions?

A. My overall position is that IP's notice to allow it to sell its transmission assets to IETC should be denied as it has been presented in this filing, on the basis of the

requirement in Section 16-111(g) and 16-102(a) of the Act. In order to address the concerns I raise, the following conditions need to be met:

- 1.) IETC must have an obligation to provide unbundled transmission service to retail customers and their agents.
- 2.) IETC must provide evidence that it, its affiliates, and its holding companies are and will remain independent of generation and marketing interests in the Midwest regional market.

Q. Does this conclude your direct testimony?

A. Yes.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Illinois Power Company)	
Illinois Electric Transmission Company, LLC)	Docket Nos. EC03-____ and
Trans-Elect, Inc.)	ER03-____
)	

**PREPARED DIRECT TESTIMONY OF
PAUL D. MCCOY**